

Exhibit 10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,)
Plaintiff,)
vs.) Case No.
ARISTA NETWORKS, INC.,) 5:14-cv-05344-BLF (PSG)
Defendant.)
_____)

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VIDEOTAPED DEPOSITION OF KEVIN C. ALMEROTH
San Francisco, California
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Volume I

Reported by:

CARLA SOARES

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1 A Well, the title of the section, it's what 09:53:27
2 you read from page 12, about line 7, "Extensible
3 Markup Language," and then "XML."

4 I think that my description of what I
5 think is the proper construction demonstrates that 09:53:39
6 that is not specific to the W3 standard.

7 Q Okay. Anywhere else?

8 A Not that jump out. There might be some,
9 but I think that that's generally it.

10 And really, I'm just looking at this 09:54:21
11 particular section, IV, B1. I don't know if I -- if
12 the term is somewhere else in the rest of the
13 patent -- sorry -- the rest of my declaration.

14 Q Do you use the term "XML" in your
15 professional life outside the context of this 09:54:40
16 litigation?

17 A I do.

18 Q What do you use it to refer to?

19 A It depends on the context. In some cases
20 I'm talking about XML as standardized by W3C. 09:54:55

21 I think in other contexts I would use the
22 term to generally refer to extensible markup
23 languages, and I think as -- a good example of that
24 would be in some instances characterizing some of
25 the other kinds of XML style languages that are 09:55:18

1 shown in the figure from the Sall reference on page 09:55:25

2 13.

3 Q What do you mean characterizing those
4 other languages?

5 A You might say something like SOAP is a 09:55:40
6 type of XML.

7 Q Okay. And SOAP is actually a protocol
8 based on the XML that's standardized by the W3C,
9 correct?

10 A Is there someplace that you're looking at 09:56:23
11 that characterization?

12 Q Well, I'm looking at the attachment that
13 you provided about SOAP. I guess the easiest way to
14 find it is, if you look at the pagination at the top
15 of the document, it says "page 145 of 193." 09:56:47

16 Are you at that page?

17 A I am.

18 Q This document that you attached to your
19 declaration was published by the W3C, correct?

20 A Yes. 09:57:15

21 Q It was published in or around May 2000, at
22 least according to the top of the document, right?

23 A The best I can tell you is that's what the
24 date on the document is.

25 Q Okay. And if you look at the abstract, it 09:57:30

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1 A Right. So the date there is supposed to 12:09:45
2 be 2000.
3 Q Not 200?
4 A Right.
5 Q They're not claiming a priority date of 12:09:51
6 200?
7 MR. TUNG: No, they're not.
8 THE WITNESS: That would be quite a
9 reduction to practice.
10 And I think Cisco might actually be 12:09:58
11 attempting to argue an earlier priority date. So
12 I'm not opining on any priority dates in my
13 declaration, just to be clear.
14 BY MR. SILBERT:
15 Q Okay. So looking at page 18, starting at 12:10:11
16 line 19, the claim term that you're opining about
17 here is "management programs," correct?
18 A Yes.
19 Q And Cisco's construction that you agree
20 with reads, "Separate tools or external agents 12:10:30
21 having their own respective command formats that
22 provide management functions," correct?
23 A Yes.
24 Q So when the construction says "separate
25 tools," what are the tools separate from? 12:10:51

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1 A Well, within the definition or proposed 12:11:36
2 construction itself, it's the idea of it's separate
3 tools. So the tools are the things that have to be
4 separate.

5 I'm sort of looking at what I've cited to 12:11:55
6 in the intrinsic record, and I think there's -- it
7 talks about different tools and it talks about sort
8 of external programs. And so the idea is that you
9 have separate tools from each other.

10	I think in paragraph 61, "separate or	12:12:14
11	external" refers to separate or external routines or	
12	programs as distinguished from, say, physically	
13	separate or external computers. So it's talking	
14	about separate or external routines or programs.	

15 Q Right. And I think part of your answer 12:12:37

16 got at my question.

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17         You're saying that the "separate" in that
18         definition means that the tools are separate from
19         each other?
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20 A I think that's one example of what -- of 12:13:04

21 where the separation could come from.

22 I think it's sort of described in I'd say
23 the two paragraphs where I talk about that issue in
24 61 and 62.

25	Q	You say that being separate from each	12:13:34
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1 other is one example of where the separation could 12:13:35
2 come from.

3 What else could the tools be separate
4 from?

5 A I mean, if there are different routines or 12:13:47
6 programs, there could be separate processes.
7 Depending on the structure and the way that the
8 programs are executed, there might be some aspect
9 that creates some separation there.

10 I'm not sure I can give you the definitive 12:14:05
11 list of things that would qualify as what would make
12 something separate, what makes the tools separate.

13 Then as I describe in paragraph 62, you go
14 back and you can look at the specification, and it's
15 characterizing or providing some characteristics of 12:14:24
16 the problems to be solved based on having the
17 separate programs.

18 Q How would I know whether two tools are
19 separate or not?

20 A I'm not sure I understand the question. 12:14:45

21 Q Well, suppose I have tools that I can use
22 in my processor-based system, and I want to know
23 whether they're separate tools or not because, say,
24 I don't want to practice this patent. What would I
25 look at to determine whether the tools are separate 12:15:07

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1 or not separate? 12:15:10

2 A I mean, "separate" means separate. You
3 could look at a variety of examples, some of which I
4 just gave.

5 If there are separate processes, that's an 12:15:20
6 example of where they could be separate; if there
7 are separate programs. You could think of counter
8 examples where it's all part of the same function or
9 it's all part of the same particular program that's
10 running some piece. 12:15:49

11 I think those are the kinds of things that
12 you would can look at to determine if you've got
13 separate tools or external agents.

14 Q What do you mean by "separate processes"?
15 Is there some definition that you have in mind when 12:16:04
16 you say that?

17 A I'm not sure I have a specific definition,
18 but you can think of -- say, in Windows, for
19 example, you can have different programs. I think
20 different icons on the desktop would potentially be 12:16:20
21 separate programs.

22 If those are executing as separate
23 processes, that's something else you could look to
24 to see that they are separate.

25 Those are a couple of examples. 12:16:32

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1 Q Yeah. So you're saying if I have 12:16:35
2 Microsoft Word and Microsoft PowerPoint, those might
3 be separate, you would consider those separate
4 tools?

5 A Yes. 12:16:48

6 Q For example?

7 A As an example.

8 Q What if I have different functions that
9 are part of the operating system? Like, you know,
10 there's the file management system in Windows I can 12:17:03
11 create and delete and move around files, and
12 there's -- I can change my desktop background using
13 the settings function.

14 Is there a way to tell whether those are
15 separate tools or not? 12:17:20

16 A I think there is. You could certainly
17 look at the source code. There might be documents
18 that describe the functionality. If there are
19 separate processes, that's something else you could
20 potentially look to. 12:17:37

21 I thought maybe a better example would be
22 that say within the operating system you have a
23 process that deals with the network time protocol,
24 and then you have another process that receives
25 input from the keyboard. You could identify those 12:17:53

1 as separate processes or separate tools within the 12:17:56
2 operating system. And Windows has a built-in clock
3 and calendar and calculator. You could consider
4 those to be separate tools.

5 Q Okay. I think I understand where you're 12:18:13
6 coming from. But just to make sure, what -- is
7 there some particular thing that indicates whether
8 two processes are separate processes or may be part
9 of the same process?

10 A Again, I could give you some examples. 12:18:32
11 You know, the idea that if you did a
12 process list, a control-alt-delete, and then looked
13 at the process list, that might be one example in
14 Windows of identifying separate processes.

15 Q Okay. That's an example in the Windows 12:18:55
16 environment, right?

17 A Yes.

18 Q And there's no -- I think I understand,
19 but just to be clear, there's no particular
20 definition that you have in mind of what makes one 12:19:04
21 process separate from another process?

22 A No, I don't think that's true. I think
23 "separate" means separate. I don't think you have
24 to define it any more than that. And you could
25 potentially look at a variety of factors to 12:19:15

1 determine whether something is separate. 12:19:19

2 I don't know that I could use any
3 different word than what separate is to define that.
4 I think separate to me is -- it's clear. It creates
5 a clear distinction of what has to be separated. 12:19:37
6 The separate tools or external agents is part of the
7 proposed construction.

8 Q Okay. Similarly, how does one know
9 whether an agent is external?

10 A So there's an example as part of the 12:20:04
11 embodiment in the '526, and I can point that to you.
12 I only have the '886.

13 Q Oh, yeah. We can give you the '526
14 patent.

15 MR. ROSEN: This has been marked 12:20:19
16 Exhibit 26.

17 THE WITNESS: I know it's 26. Do you want
18 to write on there just so you can say you wrote on
19 there?

20 MR. SILBERT: Now I can say I wrote on it. 12:20:34

21 MR. TUNG: This is one exhibit that's easy
22 to remember.

23 MR. ROSEN: Exactly.

24 THE WITNESS: So to be clear, Figure 1 is
25 described as one of the potential embodiments of the 12:21:03

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1 Do you see that? 13:11:12

2 A I do.

3 Q Which one of those in your mind is a

4 generic command?

5 A I have to see what the specification is 13:11:19

6 describing as to what the table is.

7 Q Can you tell the answer without reading

8 the specification?

9 I mean, if you just look at those two

10 commands, are you able to tell which one is a 13:11:32

11 generic command?

12 A Without context, just looking at the

13 commands by themselves doesn't necessarily tell you

14 what's generic versus not.

15 The idea that you have new syntax versus 13:11:52

16 old command line/syntax would suggest that the new

17 syntax is potentially more of a generic command.

18 But again, in some instances, it's helpful

19 to look at the basis for where the new syntax came

20 from. Maybe, maybe not. But that's -- 13:12:13

21 understanding the context is potentially

22 informative, which is why I was looking for that in

23 the specification.

24 Q Okay. But is it possible that both of

25 those commands that I pointed to, "Watch H323 13:12:30

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1 entries" and "H323 view," could be generic commands? 13:12:33

2 A In what context? Without any other

3 context, then yes.

4 Q Right. Okay. So there's no reason that

5 "H323 view" couldn't itself be a generic command in 13:12:50

6 some context, right?

7 A Outside of the confines of this example or

8 this patent, if you just wrote down on a piece of

9 paper "H323 view," could that be a generic command?

10 It could be. It depends. It depends on, you know, 13:13:06

11 where it comes from and its relationship and to the

12 extent it meets the claim language.

13 Q What about if you go down a little more

14 towards like the bottom third of the page? The new

15 syntax is "Set log level ACB warning (off/local)."

16 Do you see that one? 13:13:27

17 A I do.

18 Q And then the old command line/syntax that

19 corresponds to that is "Log level APP warning

20 [off/local]."

21 Do you see that? 13:13:51

22 A I do.

23 Q Does one of those appear to be more

24 generic to you than the other one?

25 A It's not a question of appearance so I 13:14:08

1 can't really answer the question, again, without 13:14:14
2 context and without understanding -- without
3 understanding the context. It's not simply a matter
4 of appearance.

5 Q Well, what is it a matter of to know 13:14:30
6 whether or not a command is a generic command?

7 A Whether or not it provides an abstraction
8 of the tool-specific command formats and syntax.

9 Q Okay. So take the example of the one we
10 just looked at, "Set log level ACB warning 13:14:47
11 (off/local)," which corresponds to "Log level APP
12 warning [off/local]."

13 Does one provide an abstraction as far as
14 you know?

15 A It potentially could be. Again, I haven't 13:15:05
16 seen or you haven't pointed me to the description in
17 the appendix as to what this is -- what this
18 appendix is describing. So it's basically a little
19 bit out of context.

20 Q But didn't you say that for something to 13:15:18
21 be an abstraction, it has to suppress details of the
22 specific operation?

23 A No, that's not quite what I said.

24 Q So how do I know whether or not something
25 is an abstraction of another command? 13:15:40

1 A I'm not sure I can define "abstraction" in 13:15:47
2 any different terms. It's the idea of what an
3 abstraction is.

4 Q Is "Watch H323 entries" an abstraction of
5 "H323 view"? 13:15:59

6 A Again, you have not given me the context
7 for this particular appendix. So by itself, one way
8 or the other, without looking at the specification
9 to see what it's describing with respect to the new
10 syntax and the old command line and syntax, it's 13:16:18
11 hard to say. Certainly it could be.

12 Q Looking at the commands themselves, and
13 with your knowledge as a professor of computer
14 science who teaches configuration of network
15 devices, you can't tell whether "Watch H323 entries" 13:16:37
16 is an abstraction of "H323 view"?

17 A I think divorced from any context, if you
18 just put those side by side and said is one an
19 abstraction of another, the answer would be it
20 depends. 13:16:55

21 Q What does it depend on?

22 A It depends on the context.

23 Q What about the context?

24 A It depends on whether or not it's a
25 command that provides an abstraction of the 13:17:08

1 tool-specific command formats and syntax, enabling a 13:17:10
2 user to issue the command based on the relative
3 functions as opposed to the specific syntax for a
4 corresponding tool.

5 And you would use that construction, or 13:17:21
6 one could attempt to apply Arista's construction,
7 and then perform the exercise of understanding the
8 different commands and in what context they're used
9 to decide whether or not it's a generic command or
10 not. 13:17:38

11 Q Is there anything more that you can tell
12 me than you've told me about what I would need to
13 know to determine whether "Watch H323 entries" is an
14 abstraction of "H323 view"?

15 MR. TUNG: Objection. Vague. 13:17:56

16 THE WITNESS: I'm not sure I understand
17 the question.

18 BY MR. SILBERT:

19 Q I just want to understand what I would
20 need to know in order to determine whether "Watch 13:18:04
21 H323 entries" is an abstraction of "H323 view."

22 How do I know whether one is an
23 abstraction of the other or not?

24 A Well, let me see what the context is for
25 Appendix A and what it says about Appendix A. 13:18:23

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1 Q Dr. Almeroth, did you read Appendix A in 13:18:55
2 formulating your opinions about the meaning of the
3 term "generic command"?

4 A I did. I just don't have the
5 specification memorized. 13:19:03

6 So then in column 3 it says, "As
7 illustrated in part A of the attached appendix, the
8 new syntax provides a generic instruction set that
9 provides an abstraction of the tool-specific command
10 formats and syntax, enabling a user to issue a 13:19:18
11 command based on the relative functions as opposed
12 to the specific syntax for a corresponding tool."

13 So in that instance, it's describing that
14 that's -- that's what Appendix A is, so in that
15 instance, I mean, that's part of where Cisco's 13:19:36
16 construction comes from. And if that's what it's
17 describing that it's doing, then those are generic
18 commands.

19 And to the extent you asked the question
20 about, what are you abstracting out of the "H323 13:19:49
21 view" that you -- what you're abstracting out to
22 arrive at the "Watch H323 entries" new syntax, if
23 you know the "Watch 323 entries" could potentially
24 be more understandable to a human, it could be a
25 command syntax that's applicable to other kinds of 13:20:22

1 processes that have other command formats to do 13:20:25
2 essentially the same thing.

3 There's the functional item that's
4 attributed to the new syntax, "Watch H323
5 information," and so from that perspective and based 13:20:39
6 on what's described in the specification, you can be
7 providing an abstraction where the generic command,
8 the new syntax, is specifically designed so that it
9 would work across a set of other programs or agents.

10 Q So the way that you know in this case that 13:20:59
11 "Watch H323 entries" is an abstraction of "H323
12 view" is that the patent specification says that it
13 is, correct?

14 A That's part of it. That provides the
15 context for understanding what the objective is. 13:21:15

16 And if you look at that objective in light
17 of what the syntax is and what the functional item
18 is and what its intention is, I think it is the case
19 that it's providing an abstraction.

20 Q Do you need to understand the intention in 13:21:31
21 creating the term to know whether or not it's an
22 abstraction?

23 A Not so much the intention of creating the
24 command, not where it was designed and what was in
25 the person's head when they created it, but from the 13:21:43

1 perspective of looking at the command and 13:21:48
2 potentially being able to evaluate whether it's an
3 abstraction over one or more programs.

4 Q What do you mean, "from the perspective of
5 looking at the command and potentially being able to 13:22:10
6 evaluate" -- can you tell whether one command is an
7 abstraction of another by simply looking at the two
8 commands?

9 A In some instances yes; in other instances
10 no. 13:22:24

11 There's even some instances where -- if
12 you look further down, I think one of the examples
13 that's described -- actually even some of the ones
14 that you've described, they have some of the various
15 same words or attributes that are part of the 13:22:42
16 command.

17 In that instance, the abstraction might be
18 more about having that command structured in that
19 way so that it's applicable across multiple
20 programs. 13:23:00

21 It need not be that way. There are some
22 examples in the list where it's pretty clear, like
23 the example I gave in paragraph 67 of my
24 declaration, where it's pretty clear that the new
25 syntax is much easier to understand for a person as 13:23:15

1 one example of what might make a command a generic 13:23:22
2 command.

3 Q Okay. So you said that's an example. So
4 does a command have to be easier to understand for a
5 person in order to qualify as a generic command? 13:23:38

6 A No, I don't think that's a requirement of
7 what an abstraction is. I think it's an example.

8 There's the example that's given in
9 paragraph 69. Another way of providing an
10 abstraction is to abstract out some of the 13:23:55
11 particular details.

12 In some cases it might be the syntax, so
13 you might have a command that has some additional
14 spacing to make it more understandable or easier to
15 parse or more consistent with commands for other 13:24:09
16 management programs.

17 Any of those might be potential mechanisms
18 for how an abstraction might be achieved so to make
19 a command generic.

20 Q If I presented you with a list of commands 13:24:24
21 as -- and other commands that they correspond to
22 similar to the middle and right columns in Appendix
23 A, could you tell me whether one is an abstraction
24 of the other?

25 MR. TUNG: Objection. Incomplete 13:24:43

1 hypothetical. 13:24:43

2 THE WITNESS: Maybe. I think it would
3 depend.

4 BY MR. SILBERT:

5 Q If I give you the command "delete" 13:24:50
6 followed by the name of a file, would that be an
7 abstraction of a command like a UNIX command "RM"
8 followed by the name of that file?

9 A It might be.

10 Q Because it's easier for a human to 13:25:10
11 understand?

12 A Some people. I haven't spent a lot of
13 time with UNIX. That could be one of the tests you
14 could use to establish that there was an
15 abstraction. 13:25:24

16 Q Is there any definitive way that you know
17 of to look at a command and determine whether it's
18 an abstraction of another command?

19 A Yes. I think you would look at the
20 information that was available. If it were limited 13:25:47
21 to just a list of commands, that by itself might not
22 be sufficient.

23 But again, depending on the commands --
24 you gave the example of delete and RM. It might be
25 the case if you had an "RM-F" file name and then you 13:26:04

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1 rename that as "delete," that I think you could 13:26:08
2 consider something that was easier to understand in
3 an abstraction.

4 In other instances where the commands look
5 more similar, you might have to look at additional 13:26:19
6 context or some more information to understand
7 whether it was an abstraction.

8 Q Is there any reason -- looking at the H323
9 example we were looking at, is there any reason I
10 couldn't reverse these two commands and have "Watch 13:26:37
11 H323 entries" be the old command line/syntax and
12 have "H323 view" be the abstraction?

13 A I think it would depend on context. I
14 think you could have a system that, in that example,
15 used "H323 view," and probably maybe put a space in 13:26:59
16 there, H323, space, view. That could potentially be
17 an abstraction of "Watch H323 entries."

18 Q Would there have to be a space?

19 A No, I don't think you have to have a space
20 in order to establish that there's an abstraction. 13:27:19

21 Q So you could have it exactly as written,
22 "H323 view," and have that be the generic command,
23 and "Watch H323 entries" could be the old command
24 line/syntax?

25 MR. TUNG: Objection. Incomplete 13:27:35

1 hypothetical. 13:27:35

2 THE WITNESS: As long as you were meeting
3 the requirements of the claim construction.

4 BY MR. SILBERT:

5 Q But is there any reason that that example 13:27:41
6 wouldn't meet the requirements of the claim
7 construction as far as you know?

8 MR. TUNG: Same objection.

9 THE WITNESS: Without more information, it
10 would be hard to say. 13:27:53

11 You haven't said what the requirements
12 are, how it was derived, any additional piece of
13 information.

14 So the best I could do would be to come up
15 with a tautology that says if it's meeting the claim 13:28:05
16 limitation, it would meet the claim limitation.

17 And in terms of analyzing that
18 hypothetical to determine if it meets either of the
19 parties' proposed claim constructions, I would need
20 more information. 13:28:20

21 BY MR. SILBERT:

22 Q Does the term "generic command" by itself
23 have a meaning to persons of skill in the art
24 outside the context of this patent?

25 A It's a fairly broad term. It would likely 13:28:33

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